

[109] During the course of the argument Mr. Walters for the respondents wished to address me on the subject of the exercise of my discretion in the event of my deciding that the order was a final order, but I expressed the opinion that if the order was final the right to appeal was absolute. My attention was not, however, called to the fact that the only ground stated in the petition is "that the case is from its nature a fit one for appeal," and as the appellant has elected to proceed under subsection (iii) instead of (ii), I think that the Court might have discretion, and I should have been prepared to hear further argument on the subject. As, however, I have come to the conclusion that the order appealed from is interlocutory, and that I have no jurisdiction to deal with the application, the [109] question of the exercise of my discretion does not arise.

The question as to whether an order is final or interlocutory has been the subject of numerous decisions in England. The point is of importance in three cases:

(1) under English Order 58, rule 3 where the notice of appeal in case of a final order is a 14 days' notice, whereas in the case of an interlocutory order it is a 4 days' notice;

(2) under English Order 58, rule 15 where the time within which an appeal must be brought, is within 6 weeks, in the case of a final order, and within 14 days in the case of an interlocutory order; and

(3) under the Judicature Act, 1925, section 31, subsection (1)(i) where the leave of the Judge or of the Court of Appeal is required in the case of an appeal against an interlocutory judgment or order.

The authorities collected in the *Annual Practice* appear to refer exclusively to questions arising under (1) and (2) which are not necessarily decided according to the same principles and an application under (3) and which further do not appear to provide an entirely consistent *ratio decidendi*.

As I have said, no cases are cited in the *Annual Practice* as to what orders are interlocutory for the purpose of requiring leave, and in any case all the authorities deal only with appeals from the High Court to the Court of Appeal, and are not therefore strictly in point in considering whether an order of the Court of Appeal in the Straits Settlements is interlocutory for the purpose of an appeal to the Privy Council.

For this purpose the question must be considered from a different angle, bearing in mind the object which the legislature presumably had in view. In England the Court of Appeal is always sitting, and appeals from an interlocutory order can be brought within a month or even less, the same counsel can be engaged, and the cost of such an appeal is relatively small. In a Colony such as the Straits Settlements quite different considerations arise. The expense of an appeal to the Privy Council is necessarily heavy, solicitors have to be engaged in London, counsel instructed, and the record prepared and presented. The delay in obtaining a decision is also great, and in some cases may extend to two years. Bearing these considerations in mind, I would infer on principle that it was intended that the leave of the Court should be required in every case where the judgment or order did not finally determine the rights of the litigants, and that any other

A kind of judgment or order should be considered interlocutory. Adopting this principle, it appears to me, in the words of Brett L.J. in *Standard Discount Co. v. La Grange*, 3 C.P.D. 71 that "no order, judgment or other proceeding can be final which does not at once affect the status of the parties for whichever side the decision be given."

B The order from which the present appellant decides to appeal is in effect a direction to the Registrar given in the course of an inquiry directed by the High Court. It is not even the further consideration of the action. It has been held in England that though an order on further consideration is a final order, an order on an application to vary a certificate is an interlocutory order even though the two orders happen to appear on the same piece of paper; see *per* Jessel M.R. in *Cummins v. Herron*, 4 Ch. D. 787 at p. 789. The order appealed from is merely an order for the purpose of working out the rights given by a previous order, and in questions arising under English Order 58, rule 15 such orders are always regarded as interlocutory [*Blakey v. Latham*, 43 Ch. D. 23; and *Norton v. Norton*, 99 L.T.R. 709]. In a matter of this kind the interests of the beneficiaries, the extent of the trust funds and the unavoidable delay in bringing the litigation to an end may all influence the Court of Appeal in deciding whether or not the sixth defendant should be allowed to prefer his appeal to the Privy Council, and it is proper that in a matter which does not finally dispose of the litigation the Court of Appeal should be in a position to consider whether in the interests of justice the appellant should have leave to appeal.

In the view I take of section 27(3) of the Courts Ordinance, 1934, it might well be that certain orders which in England are regarded as final for the purpose of determining the length of notice, might nevertheless be treated as interlocutory for the purpose of section 27(3). Where, however, orders similar to the order the subject of the present application, have been treated as interlocutory in England, it appears to me that *a fortiori* such orders must be treated as interlocutory for the purpose of an appeal to the Privy Council.

G The motion must therefore be refused with costs.

Motion refused.

Solicitors: *Sisson & Delay; Allen & Gledhill; Braddell Bros.; Chan & Eber; Mallal & Namazie.*

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[110] OVERSEA CHINESE BANKING CORPORATION LTD. v. THE FIRM OF YAIK JOO ANN

[110]

[O.C.J. (Terrell J.) April 1, 1936]

[Singapore Suit No. 129 of 1936]

I *Civil Procedure Rules, 1934, O.3, rr.5 and 6 — Claim in foreign currency.*

When a statement of claim is endorsed upon a specially endorsed writ in respect of the amount due upon a foreign judgment, the claim should be expressed in S.S. currency; and it should show the amount in S.S. currency which is the equivalent of the amount of the foreign currency due on the foreign judgment, calculated as on the date when the foreign judgment was obtained.

SUMMONS IN CHAMBERS.

Laycock for the plaintiffs.

C. C. Tan for the defendants.

The plaintiffs applied for summary judgment under O. XIV and their summons in chambers was dismissed by the Registrar. The plaintiffs thereupon appealed to the Judge.

The facts are sufficiently set out in the judgment.

Terrell J.: The plaintiffs applied for summary judgment. The application was opposed on three grounds: (1) that the statement of claim indorsed on the writ was not signed; (2) that the sum claimed was not in Straits currency; and, (3) on the merits.

At the hearing before the Registrar the second objection was upheld and at the request of the plaintiffs the application was referred to a Judge.

I agree with the learned Registrar that the statement of claim was properly signed. The signature of the solicitors appears at the foot of the second page of the writ, after the notices which have to be added so as to comply with the statutory form. There is no provision as to the exact place where the signature should appear and it seems to me that if it appears at the bottom of the page that is sufficient. I do not think that the defence on the merits can be sustained. The defendants' affidavit does not question the jurisdiction of the Court in Hong Kong, nor does it allege fraud. The foreign judgment is accordingly *prima facie* enforceable.

As regards the second objection, I have felt some doubt. The rule is that a judgment can only be in local currency, and from this it would appear to follow that the claim must also be expressed in local currency. The forms in *Bullen & Leake* referring to foreign bills of exchange always show the amount in sterling which is claimed to be the equivalent of the amount of the sum in a foreign currency (see 9th ed., pp. 118 *seq.*).

Mr. Laycock referred me to the case of *Scott v. Bevan*, 109 E.R. 1073. That case establishes that in a suit on a foreign judgment the rate of exchange should be calculated as on the date that the foreign judgment is obtained. The plaintiff therefore would have had no difficulty in calculating the equivalent sum in Straits currency as on the date that the Hong Kong judgment was obtained.

It was also argued that if a foreign judgment is registered the amount of the judgment must necessarily be in a foreign currency. But this is by no means the case in England. Under Order XLII, rule 2(2) the affidavit in support of the application to register the judgment must state the amount which the foreign judgment represents in English currency, and presumably when the foreign judgment is registered such sum is specified in the order. It is true that Order XLII, rule 2(2) does not appear in the Rules made under Ordinance No. 185 (Reciprocal Enforcement of Judgments), but that omission cannot affect the general

A principle that a money claim must be expressed in local currency. The plaintiffs can, of course, amend his writ without leave under Order 29, rule 2.

So far as the present application is concerned, it must be dismissed with costs to be taxed.

Judgment accordingly.

B Solicitors: *Braddell Bros.; Rodyk & Davidson.*

[111] F.M.S. REPORTS

NG WUI PIANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomas C.J.) February 22, 1936]

[Selangor Magistrate's Criminal Appeal No. 45 of 1935]

Electricity Enactment (Cap. 201), ss.2 and 43 — Conviction for dishonestly preventing a meter from duly recording the output of electrical energy — Meaning of "Consumer."

In construing the definition of "consumer" in section 2 of the Electricity Enactment (Cap. 201) there should be no narrowing of its plain meaning by the importation of limitations.

It is wide enough to include the landlord, the tenant and also the person supplied.

MAGISTRATE'S APPEAL.

The Hon. Mr. E. D. Shearn (with him *S. M. Yong*) for the appellant.

H. C. Willan (Deputy Legal Adviser) for the respondent.

It is conceded that it was not shewn that the appellant himself did any act which prevented the meter from recording. For the presumption to arise under section 40(xi) of the Electricity Enactment it was necessary for the prosecution to establish that the appellant was the consumer using the meter and that while the meter was in his custody or control artificial means were used to prevent it from registering duly.

The appellant was not the consumer, see definition of "consumer" in section 2. The premises belonged to the Chetty owner. The appellant was not supplied with energy and he did not use the meter. He was a manager only and his employers were supplied and they used the meter. A partner of the firm employing him was in Klang at all material times. The appellant had no financial liability and no right in his own person to a supply. The consumer is the department's customer—see section 43(w) and (y) and the rules made under the Enactment of 1925.

The provision in section 44(xi) must be construed strictly. It is a penal provision putting on certain accused persons an onus of disproof.

In any case it was not shewn that while the meter was in the custody of the appellant it had been prevented by artificial means from duly registering.

Premises on which the meter installed were in the name of a Chinese firm but appellant paid the rent, managed the premises, operated on the firm's banking account and had a substantial interest in the profit of the firm. He was the person who could have instructed the Electrical Department to cease supplying premises with energy.